

Message Text

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C O N F I D E N T I A L STATE 105261

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E. O. 11652: GDS

TAGS: EFIS, US, POL

SUBJECT: BILATERAL FISHERIES NEGOTIATIONS - CONCILIATION
BOARD

REF: WARSAW 2654

1. DEPARTMENT COMMENTS WHICH FOLLOW WITH RESPECT TO CHANGES
IN CONCILIATION BOARD AGREEMENT ARE GEARED TO LETTERING
USED IN SUBPARAGRAPHS OF PARAGRAPH 2 REFTEL:

A. ARTICLE X OF AGREEMENT REQUIRES GOVERNMENTS TO SHARE
EQUALLY ALL ADMINISTRATIVE AND OPERATIONAL COSTS OF BOARD.
BY NEW YORK SITUS, THERE MAY BE GREATER OPERATIONAL AND
ADMINISTRATIVE COSTS TO THE TWO GOVERNMENTS. ALSO TO BE
CONSIDERED IS THAT U. S. FUNDING OF BOARD WOULD BE FROM
" SALARIES AND EXPENSES" APPROPRIATION. ACCORDINGLY, WASH-
INGTON SITE PREFERRED, BUT DEPARTMENT CAN ACCEPT NEW YORK
IF NECESSARY. FOR FURTHER DISCUSSION OF FUNDING, SEE PARA
2 BELOW-

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B. BY NOT PERMITTING BOARD TO CONSIDER CLAIMS FROM INCIDENTS ARISING BEFORE AGREEMENT ENTERS INTO FORCE, THERE REMAINS THE POSSIBILITY OF ATTACHMENTS OF POLISH VESSELS MAKING PORT CALLS. IF POLES DO NOT WISH TO GIVE BOARD SCOPE TO CONSIDER SUCH CLAIMS, DEPARTMENT WILLING TO GO

ALONG. THIS REASONING WOULD ALSO SEEM APPLICABLE IF STATUTE OF LIMITATIONS IS A SHORT SIX MONTHS. IN ADDITION, DEPARTMENT BELIEVES SIX MONTHS MAY BE INSUFFICIENT TIME FOR U. S. FISHERMAN TO PREPARE CLAIM SATISFACTORY FOR PRESENTATION TO BOARD. ANOTHER CONSIDERATION IS THAT SUGGESTED WORDING MAY CAUSE AN INITIAL PROBLEM IN PERIOD IMMEDIATELY AFTER SIGNATURE, SINCE IT WILL TAKE SOME TIME FOR U. S. BOARD MEMBERS TO BE APPOINTED AND CLAIMANTS MAY AS A RESULT HAVE VERY SHORT PERIOD TO BRING CLAIMS. (THAT IS, WITHOUT BOARD MEMBERS, CLAIMANTS MAY NOT HAVE ANYONE TO BRING CLAIMS TO UNDER ARTICLE III, PARA 2.) CONSEQUENTLY, LONGER STATUTE OF LIMITATIONS WOULD SEEM TO BETTER PROTECT POLES AGAINST ATTACHMENT, AND DEPARTMENT SUGGESTS THAT DELEGATION RECOMMEND AS POSSIBLE SOLUTION THAT ARTICLE 2, PARA 1 READ: " NO CLAIM MAY BE BROUGHT MORE THAN SIX MONTHS AFTER THE OCCURRENCE OF THE RELEVANT INCIDENT, UNLESS THE BOARD DECIDES UNANIMOUSLY TO MAKE AN EXCEPTION." IF POLES REMAIN COMPLETELY INTRANSIGENT, PRESENT LANGUAGE MAY BE USED.

D. IN ARTICLE IV, PARA 1, BOARD IS NOT MAKING " RECOMMENDATIONS"; THEREFORE, DEPARTMENT WOULD PREFER THAT THIS WORD NOT RPT NOT BE USED IN PARA 2. IF BOARD DOES NOT ADOPT REPORT BY UNANIMITY, EACH BOARD MEMBER SHOULD BE ABLE TO MAKE STATEMENT; CONSEQUENTLY, FOR CLARITY, DEPARTMENT SUGGESTS END OF PARA 2 READ: " OF EACH BOARD MEMBER' S OPINION."

H. CONGRATULATIONS.

K. SINCE TEXT APPEARS TO BE GARBLED, DEPARTMENT NOT RPT NOT CLEAR ON CONTENT OF INTERIM REVIEW, DENOUNCEMENT, AND CONTINUATION OF CONCILIATION PROCEEDING PROVISIONS AND THEIR CONFIDENTIAL

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RELATIONSHIP TO AGREEMENT ITSELF AND ITS REVIEW AND TERMINATION PROVISIONS. IT IS, HOWEVER, IMPORTANT TO ENSURE THAT IF AGREEMENT TERMINATED NO CONCILIATION PROCEEDINGS MAY THEREAFTER BE INSTITUTED, ALTHOUGH ONGOING ONES SHOULD BE COMPLETED.

2. THERE IS A REQUIREMENT IN U. S. LAW THAT CONGRESS CANNOT

BE COMMITTED TO APPROPRIATE FUNDS IN FUTURE IN ABSENCE OF
AUTHORIZING LEGISLATION OR TREATY. CRIMINAL PENALTY IS AT-
TACHED FOR VIOLATION. TO DEAL WITH THIS LEGAL REQUIREMENT,
DELEGATION SHOULD PROCEED IN ONE OF FOLLOWING WAYS:

A. ADD TO ARTICLE X FOLLOWING SENTENCE: " ANY OBLIGATIONS
FOR THE EXPENDITURE OF FUTURE FUNDS CONTAINED IN THIS
AGREEMENT ARE DEPENDENT ON THE AVAILABILITY OF APPROPRIATED
FUNDS BY EACH OF THE TWO GOVERNMENTS IN ACCORDANCE WITH
ITS APPLICABLE CONSTITUTIONAL AND LEGAL REQUIREMENTS."
THIS IS STANDARD LANGUAGE FOR EXECUTIVE AGREEMENTS.

B. HAVE SENTENCE IN PARA A INCORPORATED INTO AGREED MIN-
UTES OR AGREED REPORT.

C. DELEGATION SHOULD STATE THIS REQUIREMENT ORALLY AS
US UNDERSTANDING OF AGREEMENT AND SHOULD REPORT SUCH STATE-
MENT IN FULL BY CABLE SO DEPARTMENT HAS WRITTEN RECORD FOR
LATER USE IF NEEDED.

3. SUBJECT TO ABOVE, DEPARTMENT CONCURS IN TEXT. RUSH

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